

verification by the Service, if the evidence required to be submitted by the applicant is already contained in the Service's file or databases relating to the applicant, the applicant may submit a statement to that effect in lieu of the actual documentation.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38350, June 4, 2002]

§ 245a.13 During pendency of application.

(a) *In general.* When an eligible alien in the United States submits a prima facie application for adjustment of status under LIFE Legalization during the application period, until a final determination on his or her application has been made, the applicant:

(1) May not be deported or removed from the United States;

(2) Is authorized to engage in employment in the United States and is provided with an "employment authorized" endorsement or other appropriate work permit; and

(3) Is allowed to travel and return to the United States as described at paragraph (e) of this section. Any domestic LIFE Legalization applicant who departs the United States while his or her application is pending without advance parole may be denied re-admission to the United States as described at paragraph (e) of this section.

(b) *Determination of filing of claim for class membership.* With respect to each LIFE Legalization application for adjustment of status that is properly filed under this Subpart B during the application period, the Service will first determine whether or not the applicant is an "eligible alien" as defined under § 245a.10 of this Subpart B by virtue of having filed with the Service a claim of class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit before October 1, 2000. If the Service's records indicate, or if the evidence submitted by the applicant with the application establishes, that the alien had filed the requisite claim of class membership before October 1, 2000, then the Service will proceed to adjudicate the application under the remaining standards of eligibility.

(c) *Prima facie eligibility.* Unless the Service has evidence indicating ineligibility due to criminal grounds of inad-

missibility, an application for adjustment of status shall be treated as a prima facie application during the pendency of application, until the Service has made a final determination on the application, if:

(1) The application was properly filed under this Subpart B during the application period; and

(2) The applicant establishes that he or she filed the requisite claim for class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit.

(d) *Authorization to be employed in the United States while the application is pending.*

(1) *Application for employment authorization.* An applicant for adjustment of status under LIFE Legalization who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file a Form I-765, Application for Employment Authorization, with the Service, including the fee as set forth in § 103.7(b)(1) of this chapter. The applicant may submit Form I-765 either concurrently with or subsequent to the filing of the application for adjustment of status benefits on Form I-485.

(2) *Adjudication and issuance.* Until a final determination on the application has been made, an eligible alien who submits a prima facie application for adjustment of status under this Subpart B shall be authorized to engage in employment in the United States and be provided with an "employment authorized" endorsement or other appropriate work permit in accordance with § 274a.12(c)(24) of this chapter. An alien shall not be granted employment authorization pursuant to LIFE Legalization until he or she has submitted a prima facie application for adjustment of status under this Subpart B. If the Service finds that additional evidence is required from the alien in order to establish prima facie eligibility for LIFE Legalization, the Service shall request such evidence from the alien in writing. Nothing in this section shall preclude an applicant for adjustment of status under LIFE Legalization from being granted an initial employment authorization or an extension of employment authorization under any

other provision of law or regulation for which the alien may be eligible.

(e) *Travel while the application is pending.* This paragraph is authorized by section 1104(c)(3) of the LIFE Act relating to the ability of an alien to travel abroad and return to the United States while his or her LIFE Legalization adjustment application is pending. Parole authority is granted to the Missouri Service Center Director for the purposes described in this section. Nothing in this section shall preclude an applicant for adjustment of status under LIFE Legalization from being granted advance parole or admission into the United States under any other provision of law or regulation for which the alien may be eligible.

(1) An applicant for LIFE Legalization benefits who wishes to travel during the pendency of the application and who is applying from within the United States should file, with his or her application for adjustment, at the Missouri Service Center, a Form I-131, Application for Travel Document, with fee as set forth in §103.7(b)(1) of this chapter. The Service shall approve the Form I-131 and issue an advance parole document, unless the Service finds that the alien's application does not establish a prima facie claim to adjustment of status under LIFE Legalization.

(2) An eligible alien who has properly filed a Form I-485 pursuant to this Subpart B, and who needs to travel abroad pursuant to the standards prescribed in section 212(d)(5) of the Act, may file a Form I-131 with the district director having jurisdiction over his or her place of residence.

(3) If an alien travels abroad and returns to the United States with a grant of advance parole, the Service shall presume that the alien is entitled to return under section 1104(c)(3)(B) of the LIFE Act, unless, in a removal or expedited removal proceeding, the Service shows by a preponderance of the evidence, that one or more of the provisions of §245a.11(d) makes the alien ineligible for adjustment of status under LIFE Legalization.

(4) If an alien travels abroad and returns without a grant of advance parole, he or she shall be denied admission and shall be subject to removal or expedited removal unless the alien es-

tablishes, clearly and beyond doubt, that:

(i) He or she filed an application for adjustment pursuant to LIFE Legalization during the application period that presented a prima facie claim to adjustment of status under LIFE Legalization; and,

(ii) His or her absence was either a brief and casual trip consistent with an intention on the alien's part to pursue his or her LIFE Legalization adjustment application, or was a brief temporary trip that occurred because of the alien's need to tend to family obligations relating to a close relative's death or illness or similar family need.

(5) An applicant for LIFE Legalization benefits who applies for admission into the United States shall not be subject to the provisions of section 212(a)(9)(B) of the Act.

(6) Denial of admission under this section is not a denial of the alien's application for adjustment. The alien may continue to pursue his or her application for adjustment from abroad, and may also appeal any denial of such application from abroad. Such application shall be adjudicated in the same manner as other applications filed from abroad.

(f) *Stay of final order of exclusion, deportation, or removal.* The filing of a LIFE Legalization adjustment application on or after June 1, 2001, and on or before June 4, 2003, stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the LIFE Legalization application, unless the district director who intends to execute the order makes a formal determination that the applicant does not present a prima facie claim to LIFE Legalization eligibility pursuant to §§245a.18(a)(1) or (a)(2), or §§245a.18(c)(2)(i), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v), or (c)(2)(vi), and serves the applicant with a written decision explaining the reason for this determination. Any such stay determination by the district director is not appealable. Neither an Immigration Judge nor the Board has jurisdiction to adjudicate an application for stay of execution of an exclusion, deportation, or removal order, on the basis of the

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alien's having filed a LIFE Legalization adjustment application.

[66 FR 29673, June 1, 2001, as amended at 67 38351, June 4, 2002]

§ 245a.14 Application for class membership in the CSS, LULAC, or Zambrano lawsuit.

The Service will first determine whether an alien filed a written claim for class membership in the CSS, LULAC, or Zambrano lawsuit as reflected in the Service's indices, a review of the alien's administrative file with the Service, and by all evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that, before October 1, 2000, he or she was a class member applicant in the CSS, LULAC, or Zambrano lawsuit. An alien should include as many forms of evidence as the alien has available to him or her. Such forms of evidence include, but are not limited to:

(a) An Employment Authorization Document (EAD) or other employment document issued by the Service pursuant to the alien's class membership in the CSS, LULAC, or Zambrano lawsuit (if a photocopy of the EAD is submitted, the alien's name, A-number, issuance date, and expiration date should be clearly visible);

(b) Service document(s) addressed to the alien, or his or her representative, granting or denying the class membership, which includes date, alien's name and A-number;

(c) The questionnaire for class member applicant under CSS, LULAC, or Zambrano submitted with the class membership application, which includes date, alien's full name and date of birth;

(d) Service document(s) addressed to the alien, or his or her representative, discussing matters pursuant to the class membership application, which includes date, alien's name and A-number. These include, but are not limited to the following:

(1) Form I-512, Parole authorization, or denial of such;

(2) Form I-221, Order to Show Cause;

(3) Form I-862, Notice to Appear;

(4) Final order of removal or deportation;

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(5) Request for evidence letter (RFE); or

(6) Form I-687 submitted with the class membership application.

(e) Form I-765, Application for Employment Authorization, submitted pursuant to a court order granting interim relief.

(f) An application for a stay of deportation, exclusion, or removal pursuant to a court's order granting interim relief.

(g) Any other relevant document(s).

[66 FR 29673, June 1, 2001, as amended at 67 38351, June 4, 2002]

§ 245a.15 Continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988.

(a) *General.* The Service will determine whether an alien entered the United States before January 1, 1982, and resided in continuous unlawful status since such date through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that he or she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988.

(b) *Evidence.*

(1) A list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

(2) The following evidence may establish an alien's unlawful status in the United States:

(i) Form I-94, Arrival-Departure Record;

(ii) Form I-20A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students;

(iii) Form IAP-66, Certificate of Eligibility for Exchange Visitor Status;

(iv) A passport; or

(v) Nonimmigrant visa(s) issued to the alien.

(c) *Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

(1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1,